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Paper No. 31

In re Application of
Fredric Goldstein
Application No. 09/340,303
Filed: June 28, 1999
Attorney Docket No. 227076/014

: DECISION ON PETITION

This is a decision on the petition filed by facsimile transmission on April 16, 2004 by which petitioner requests withdrawal of the examiner's holding that this application stands abandoned for failure to file a proper and timely reply to the Office action dated April 25, 2003. The petition is considered pursuant to 37 CFR 1.181, and no fee is required.

The petition is dismissed.

Petitioner alleges that a timely and proper reply to the Office action. On January 20, 2004, petitioner submitted a facsimile copy of that reply. Apparently, the reply was filed by counsel for petitioner, Norman Friedland. Apparently, the reply was filed together with a post card receipt, but the post card receipt was not returned to counsel. The reply was not filed utilizing either 37 CFR 1.8 or 37 CFR 1.10.

37 CFR 1.6 indicates that correspondence is considered to be filed in the Office when it is actually received. 37 CFR 1.8 and 37 CFR 1.10 provide exceptions wherein correspondence will be considered to have been received in the Office on the date that it is mailed or transmitted to the Office, in certain circumstances and upon compliance with certain requirements stated in these regulations. In the absence of direct evidence that the reply was timely filed, that is, either received in the Office on or before July 25, 2003 or received in the Office after July 25, 2003 but on or before October 25, 2003 together with a petition for extension of time under 37 CFR 1.136(a) together with the extension fee petitioner has submitted two verified statements, one by petitioner, and one by Mr. Norman Friedland, counsel of record who prepared the reply to the April 25, 2003 Office action. These statements clearly evidence that the a reply to the Office letter in question, together with a request for extension of time were in fact prepared and mailed to the Office. But they simply do not establish that the reply was filed, i.e. received in the Office, on or before October 25, 2003, the last date for filing a reply to the Office letter dated April 25, 2003 permitted pursuant to 35 USC § 133.

Petitioner may submit a renewed petition, without fee, providing any additional evidence which would show that a reply to the Office letter in question was actually received in the Office. Absent such evidence, petitioner should consider filing a petition to revive under 37 CFR 1.137.

PETITION DISMISSED.

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VIA AIR MAIL